[APPENDIX II.]

Instructions regarding the holding of departmental inquiries under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules.

1. The procedure to be followed before an order of dismissal, removal or reduction is passed against a Government servant under Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules or under Rule 49 of the Civil Services (Classification, Control and Appeal) Rules (other than an order based on facts which have led to his conviction in a criminal court) is prescribed in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. Neglect in the due observance of the provisions of the Rule is liable to vitiate the whole proceedings and the ultimate order passed therein. Apart from the fact that these provisions have been deliberately inserted for the protection of members of the Services, and apart from the possibility of such an order being successfully challenged in a court of law, the disregard of these provisions provides as an officer who has been punished with an almost irresistible case for the reversal in appeal of any order passed against him. It may often happen that though on its merits an order of punishment may be fully justified, it may have to be set aside on account of some technical defect or irregularity committed in the conduct of the inquiry. The following instructions are, therefore, issued for the guidance of officers who may have occasion to hold an inquiry under the abovementioned rule.

2. The essential requirements of the rule are:—

(*a*) No order of dismissal, removal or reduction (other than an order based on facts which have led to his conviction in a criminal court) shall be passed unless the Government servant concerned (hereinafter referred to as the person charged), has been informed in writing of the grounds on which it is proposed to take action.

(*b*) The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case.

(*c*) The person charged shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person.

(*d*) If he so desires, an oral inquiry shall be held. At the inquiry so held, oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for reasons to be recorded in writing, refuse to call any witnesses.

(*e*) The proceedings shall contain a sufficient record of the evidence and a statement of the findings and grounds.

3. The grounds on which it is proposed to take action should be reduced to writing in the form of a series of definite charges. Each charge should be drawn up clearly and precisely, care being taken to avoid vagueness.

4. The charges so framed should be communicated to the person charged, together with a statement of the allegations on which each charge is based and other circumstances which it is proposed to take into consideration in

passing orders in the case. The relevant allegations as to facts should be clearly stated, as well as the inferences which they appear to lead to; and any circumstances which appear to support such inferences should also be clearly mentioned. Copies of the relevant documents, if any, should also be supplied to him. In short, the person charged should be informed to the whole case against him in all its essential features.

5. Thereafter, the person charged should be required to put in a written statement of his defence within a reasonable time, and he should also be asked to state whether he desires to be heard in person. Though it is in the discretion of the officer holding the inquiry to decide what would be the "reasonable time" it is safer to be liberal on this point. The time should be fixed according to the circumstances of each case, and if the person charged applies for further time, such request should not be lightly refused. The right of being allowed to defend himself is an important right of the person charged, and a denial of this right would constitute a serious defect in the inquiry.

6. After the written statement of defence, if any, is filed, and even if no such written statement is filed, the person charged should be given an opportunity of making an oral statement, either to supplement or explain the written statement, or in lieu of it, as the case may be.

7. If the person charged refuses to make any statement as regards any charge, his refusal to make a statement should be recorded. It should not however be presumed from his refusal to make a statement that he admits the truth of the charge.

8. Thereafter the officer holding the inquiry may, if he considers it necessary to do so, and must, if the person charged desires it, hold an oral inquiry.

9. At the oral inquiry, evidence should be heard as to such of the allegations as are not admitted. All evidence should be recorded in the presence of the enquiry officer and the person charged, and the evidence in support of the allegations against the person charged should be recorded first. He should be allowed to give evidence in person and also to cross-examine the witnesses examined against him. The person charged is also entitled to have called at the inquiry such witnesses as he may wish. The right is, however, subject to the power of the inquiry officer to refuse to call a witness for special and sufficient reasons which must be recorded by him in writing. Though it is in the discretion of the inquiry officer to decide what would be special and sufficient reasons for refusing to call a particular witness, the discretion must not be exercised capriciously to the prejudice of the person charged. Ordinarily, the request to call a witness should not be rejected. When, however, it appears that the request to call a particular person to give evidence is vexatious or is made with a view unnecessarily to delay or prolong the inquiry, such request may be requested, e.g., when the request is to call an officer who has absolutely no knowledge of the facts relating to any of the charges, and the request is made merely to trouble, or cause inconvenience to, that officer.

10. The evidence of each witness should be recorded, in the form of a narrative, in the language of the district, or, if the witness understands English, in English. After the evidence of a witness is completed, it should be read over to him and, if necessary, explained to him in the language in which it was given. It should be corrected, if necessary, and then signed by the inquiry officer. If the witness denies the correctness of any part of the

evidence when the same is read over to him, the inquiry officer may, instead of correcting the evidence, make a memorandum thereon of the objection taken to it by the witness and may add such remarks as he thinks necessary. If the evidence is given in English, and if the person charged is not familiar with that language, an authenticated translation of such evidence in the language of the district should form part of the record. Copies of such evidence, as are required by the person charged, should be supplied to him free of charge.

11. Ordinarily, the person charged should be required to produce his documentary evidence, if any, along with his written statement, but such evidence should not be rejected merely because it is produced late. It is always safer to admit relevant documentary evidence produced by the person charged at any stage. The documentary evidence proposed to be used against such person should, as a rule, be placed on record at a very early stage, and copies of such evidence should, as stated above in paragraph 4 be supplied to him at the time when the charges and the grounds on which they are based are communicated to him.

12. Ordinarily, pleaders should not be allowed to appear in the inquiry, for otherwise the inquiry might be very prolonged. The person charged is also not entitled as of right to ask for being defended by a pleader in such inquiry. But there is no prohibition against allowing pleaders on either side; and it must always be borne in mind that the person charged should have an adequate opportunity of defending himself. If, therefore, the case is very complicated or difficult, or where the person charged is likely to be embarrassed, he might be allowed to have legal aid.

13. The officer holding the inquiry has no power to enforce the attendance of witnesses. If the attendance cannot be secured by a mere notice or request to attend, it is clear that the witness is not willing to give evidence, and it may be presumed that the witness would probably not support the prosecution or the person charged as the case may be. The expenses of witnesses called to give evidence against the person charged should be borne by Government, while the expenses of witnesses called by or at the instance of the person charged should be borne by him.

14. After completing the oral inquiry, if any, and giving the person charged a further opportunity of making a written or oral statement, the inquiry officer should record his findings on each charge and the reasons for such findings.

15. The procedure laid down in Rule 55 may not be followed, and all or any of its provisions or of the above instructions may be waived, in the following cases:—

(*i*) When the order of punishment, *i.e.*, dismissal, removal or reduction is to be based on facts which have led to the conviction of the person charged in a criminal court. In such cases the order of punishment may be passed on the strength of the facts as disclosed in the criminal case.

(*ii*) When the person charged has absconded, or when it is for other reasons impracticable to communicate with him.

(*iii*) In exceptional cases, when there is difficulty in observing the exact requirements of the rule. The requirements of the rule should not, however, be waived, unless it can be done without injustice to the person charged. In such cases the inquiry officer must also record in writing his reasons for waiving the requirements of the Rule.